IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.28 OF 2004

Ramchandra Satyanarayana Chaurasia
Brother of Detenu Shri Dinesh Kumar
Satyanarayana Chaurasia ...Petitioner

vs.

1. Union of India
2. The Joint Secretary,
COFEPOSA Cella
3. State of Maharashtra ...Respondents

Shri I.F.Baria for the Petitioner
Shri Salvi with R.M.Agarwal for State

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : OCTOBER,28 2004.

ORAL JUDGMENT : **(Per Abhay S. Oka,J.)**

1. By this Petition under Article 226 of Constitution of India the Petitioner has taken exception to the order of detention dated 13th October 2003 passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

2. The impugned order of detention has been passed under Section 3(1) of Conservation of Foreign Exchange and Prevention of smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA"). The order has been passed with a view to prevent the Petitioner from acting in any manner prejudicial to the augmentation of foreign exchange in future.

3. Shri Bagaria the learned Counsel for the Petitioner submitted that when the order of detention was issued the Petitioner was already in the custody. Inspite of this position no reasons are given in the order of detention to show as to why the detention of the Petitioner is necessary. He submitted that unless compelling reasons to detain the Petitioner were in existence, the order of detention could not have been passed. The learned Counsel for the Petitioner relied upon the order dated 2nd May 2003 passed by the learned Metropolitan Magistrate, 28th I/c 19th Court, Esplanade, Mumbai by which the Petitioner was ordered to be released on bail in the sum of Rs.1,50,000/-. He pointed out that by the said order the Petitioner was directed to attend the office of GB., CB. C.I.D. once in a fortnight i.e. 1st and 3rd Saturday between 5.00 p.m. to 7.p.m. By the said order restriction was imposed on the Petitioner not to leave India without permission of the learned Magistrate. He submitted that the order dated 2nd May 2003 was a vital document and therefore non placing of the said vital document before the detaining authority has vitiated the order of detention.

4. The learned Counsel for the Petitioner further submitted that in paragraph No.21 of the grounds of detention it is stated that the co-detenu of the Petitioner C. Surendran was wanted by the Bombay Crime Branch Police in F.I.R. No.16 of 2001 which was relating to cheque theft case. The Petitioner

was also arrested in connection with the said case. He pointed out that on the basis of the report received from the Income Tax Department, Mumbai regarding transfer of huge funds in dubious manner to Coimbatore and Kerala, D.C.B. C.I.D. filed a charge sheet before the Additional Chief Metropolitan Magistrate, 3rd Court, Mumbai vide F.I.R.No.111 of 2002 against the Petitioner and his co-detenu C. Surendran. The Petitioner was also arrested in connection with the said case. He submitted that the Petitioner was released on bail in both the cases and it was the duty of the detaining authority as well as the Sponsoring authority to supply copies of the documents pertaining to release of the Petitioner from judicial custody in F.I.R.Nos.111 of 2003 and 16 of 2001. He submitted that non-furnishing of the copies of the orders has vitiated the order of detention. He further submitted that though the detaining authority has referred to the detention of the Petitioner in connection with the said two cases and has also made a reference to the release of the Petitioner from judicial custody, copies of bail applications, copies of reply to the said Application and copies of order passed by the the learned Magistrate were not placed before the detaining authority. He submitted that the detaining authority had called information from the police regarding filing of the charge sheets in the said two cases. He submitted that nonplacement of F.I.R. No.111 of 2002 and 16 OF 2001 has vitiated the order of detention as the said documents could have influenced the mind of the detaining

authority while arriving at subjective satisfaction. He lastly submitted that there was a gross delay in issuing order of detention and therefore the livelink between the prejudicial activities of the Petitioner and order of detention has been snapped. The learned Counsel for the Petitioner Shri Bagaria relied upon the Judgment of Division Bench of this court reported in 2002 ALL MR (Cri) page No.405 (Smt.Elsy George Vs. Union of India & Ors.) He also relied upon the Judgments of the Apex Court reported in (1990) 2 Supreme Court Cases page No.1 (M. Ahamedkutty Vs. Union of India & another) and 1991 CRI.L.J. page No.430 (P.U.Abdul Rahiman Vs. Union of India and others).

5. Shri R.M.Agarwal and Shri Salvi appearing for the Respondents relied upon the Affidavit of Shri R.K.Gupta, the detaining authority and additional Affidavit filed by the detaining authority. A reliance was placed on various Judgments to which reference will be made at a later stage. Shri Agarwal pointed out that the Petitions filed by the three co-detenues of the Petitioner in the same case challenging the order of detention have been dismissed by the Division Bench of High Court of Judicature of Madras. He placed on record the copies of the common Judgment delivered in the said Petitions.

6. The learned Counsel for the Respondent submitted that the order of detention is not based on F.I.R.No.16 of 2001 and

F.I.R. No.111 of 2002. He stated that the cases on which the said F.I.Rs. are registered have nothing to do with the grounds of detention order. He submitted that the detaining authority has called for the information about the said F.I.Rs.. He stated that in fact the charge-sheets have been filed in the Court in two cases were placed before the detaining authority. He submitted that none of the documents pertaining to the said cases are vital document. He submitted that the ground case is relating to foreign exchange resources of the country. He submitted that the order dated 2nd May 2003 granting bail to the Petitioner was also not relevant and or vital document. He submitted that whether a document is vital document or not depends on the facts of the each case.

7. He relied upon the chronology of events and dates which is annexed to the Additional Affidavit in reply. He submitted that if the Division Bench of Madras Court has taken a particular view in the Petition filed by G.M.Gopalan Nambiar and others, the same view deserves to be taken in this Petition. Relying upon the said chronological events and averments made in the Affidavit in reply and the Additional Affidavit, the learned Counsel for the Respondent submitted that there was no delay in issuing the order of detention. He submitted that in any event there is satisfactory explanation for delay and submitted that looking to the nature of the prejudicial activities carried on by the Petitioner, livelink between the activities and the order of detention is not snapped.

8. We will deal with the submissions of learned Counsel for the Petitioner that copy of order dated 2nd May 2003 granting bail to the Petitioner was a vital document as it was the order by which the Petitioner was released from custody. He submitted that when the Petitioner was to be detained under law of preventive detention, placing copy of order granting bail before the detaining authority was mandatory. In this behalf, it will be necessary to refer to the decision of the Apex Court reported in (2002) 6 Supreme Court Cases page No.735 (K. Varadharaj Vs. State of Tamil Nadu and another). It was contended before the Apex Court that in view of the law laid down by the Apex Court in the Judgment reported (1990) 2 Supreme Court Cases page No.1, (M. Ahamedkutty Vs. Union of India), it was mandatory for the detaining authority to consider the application for bail and order made thereon. The Apex Court while dealing with the said submission held that,

> **"...it is clear that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case.** We are in respectful agreement with the view express by the aforesaid two judgments which in our opinion are not conflicting..." (emphasis supplied)

In view of the what has been held by the Apex Court we will have to examine the facts of the present case and find out whether the order granting bail and application for bail and other documents were vital documents.

9. In the order of detention and in particular in paragraph No.21 of grounds of detention a reference is made to F.I.R.No.16 of 2001 and F.I.R.No.111 of 2002. In the said paragraph it is stated that F.I.R. No.16 of 2001 was relating to cheques theft case in which the Petitioner was arrested. It is also stated in the said paragraph that Mumbai Police had filed a charge sheet before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai vide F.I.R.No.111 of 2002. It is stated that the charge sheet in F.I.R.No.111 of 2002 was filed on the basis of report made by the Income Tax Department, Mumbai regarding transfer of huge funds in dubious manner from Mumbai to Coimbatore and Kerala to the extent of Rs.400 crores. In paragraph No.21 of the order, the detaining authority has already noted that the Petitioner was arrested in the said case and later on released from the judicial custody. The grievance of the Petitioner is regarding non placing of the copies of F.I.R. in the said cases before the detaining authority. In this connection, it will be necessary to refer to the various documents which were supplied to the detenu along with the grounds of detention. Page No.320 is a letter dated 19th February 2003 sent by the Assistant Director of Enforcement, Ministry of Finance, Government of India, Mumbai. In the said letter it is mentioned that the Directorate has conducted certain investigations against one C. Surendran (co-detenu of the Petitioner) for his suspecting involvement in a multi role compensatory payment - Hawala

racket. By the said letter a request was made to the Senior Inspector of Police to furnish copy of charge sheet filed against C. Surendran in F.I.R.No.16 of 2001. Along with the letter dated 2nd May 2003, the Senior Inspector of Police, General Crime Branch, C.I.D., Mumbai forwarded a charge sheet filed by the Police to the Assistant Director. The charge sheet contains all relevant facts. The charge sheet shows that the Petitioner and others are made accused in the said case. The charge sheet shows that the same is filed on the basis of complaint made by M/s. Birla Global Finance Limited alleging theft of a City Bank cheque and the letter head of the said company and forging the said cheque and the letter head. The charge sheet contains all material particulars of allegations against the Petitioner and his co-detenu. The F.I.R.No.111 of 2002 was filed on the basis of information from the Income Tax Department, Mumbai. In the paragraph No.4 of Affidavit-in-reply of the detaining authority it is stated that the F.I.Rs. referred to above were not relating to the ground case of the Sponsoring authority i.e. the Directorate of Enforcement. The narration about involvement of the detenu in those F.I.Rs. was made to support the subjective satisfaction of the detaining authority regarding potentiality and propensity of the Petitioner of indulging in illegal activities. It is stated that as the said F.I.R. Nos. 16 of 2001 and 111 of 2002 do not relate to ground case on the basis of which the order of detention has been passed, the said F.I.Rs. cannot be said to be material documents which could

have influenced the subjective satisfaction of the detaining authority.

10. The order of detention shows that the detaining authority was also aware that the accused was arrested in connection with the F.I.R.No.111 of 2002 by the Mumbai Police and was in judicial custody and subsequently he was released from the judicial custody. The question is whether the order dated 2nd May 2003 granting bail to the Petitioner was a vital document. As stated earlier the case in which the order of bail is passed is not a case on the basis of which the order of detention is passed. However, the detaining authority has noted that the Petitioner has been released on bail. As the order of bail is passed in a case which is not at all a ground case for passing the order of detention, the said order granting bail does not become a vital document by any stretch of imagination.

11. It will be necessary to refer to the Judgments relied by the Counsel appearing for the parties. The Judgment of the Apex Court in the case of P.U.Abdul Rehiman (supra) will have to be read in the context of law laid down by the Apex Court in the subsequent case V.Varadharaj (supra) Now, the law seems to be clear that whether a particular document is a vital document or not depends on the facts of the case. As noted above in the facts of the case we have held that the copies of F.I.Rs. and application for grant of bail and order passed

thereon are not vital documents. The reliance placed by the Petitioner on the decision in the case of Ahmed Kutty (supra) cannot help the Petitioner as the Apex Court while deciding the subsequent case of Varadhraj has considered the decision in the case of Ahmedkutty.

12. In the decision of the Division Bench of this Court in the case of Elsy George (supra) F.I.R. lodged by C.B.I. was not placed before the detaining authority and copy thereof was not supplied. The decision of this court shows that in the facts of the case before the Division Bench copy of F.I.R. was a vital document. Reliance was placed by the Petitioner on the observations made in paragraph No.18 of the said Judgment and it is contended that if the documents relating to cases registered by different law enforcement agencies under different relevant enactments are vital documents. The said observation was made in context of the statement made by the detaining authority in the Affidavit before this Court. It is pertinent to note here that the said decision was rendered by this Court on 19th October 2001 and the Judgment in the case of K. Varadharaj (supra) by the Apex court was delivered on 12th April 2002. As the F.I.R.No.16 of 2001 and 111 of 2002 do not relate to the ground case in the order of detention and the F.I.Rs. relate to altogether different cases having no direct connection with the ground case, non placement of the F.I.Rs. before the detaining authority will not vitiate the order of detention.

13. In so far as the ground of delay is concerned, in the additional Affidavit filed by the detaining authority setting out the chronology of events and the dates shows that apart from the Petitioner there are six other co-detenues. The chronology discloses that the investigation started from 11th April 2000 with the search of residential premises of C. Surendran and from that date steps are being taken in every month. Several documents from various agencies and institutions were called for. Several cases were examined and then only order of detention was passed on 13th October 2003. In our view there is clear explanation to the so called delay in passing the detention order. In the facts of the present case there is a valid explanation for the alleged delay and there is no snapping of live link. The duration of delay is not material, what is material is whether there is unexplained delay; resulting in snapping the link, whether long or short.

14. We are of the view that there is no merit in the contentions raised by the Petitioner. Therefore, Petition is dismissed. Rule is discharged with no order as to costs.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)